

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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U.S. Department of Labor Proposes to Increase the Salary Level to Qualify for the White Collar Exemptions

On Aug. 30, 2023, the U.S. Department of Labor (USDOL) issued a proposed rule to increase the minimum weekly salary to qualify for the Fair Labor Standards Act white collar exemptions from \$684 per week (the annual equivalent of \$35,568) to \$1,059 per week (the annual equivalent of \$55,068). This new proposed salary level is based on the 35th percentile of earnings of full-time salaried workers in the lowest-wage Census Region. When the exempt salary level was last raised to \$684 effective Jan. 1, 2020, the USDOL set it at the 20th percentile of earnings of full-time salaried workers in the lowest-wage Census Region.

The USDOL is also proposing to increase the annual salary threshold to qualify for the highly compensated employee exemption from \$107,432 to \$143,988, which is the 85th percentile of earnings of full-time salaried workers nationally. This minimum annual salary must include payment of at least \$1,059 per week on a salary basis, and the remainder of the annual salary can consist of non-discretionary bonuses or commissions. To qualify for the highly compensated employee exemption, an employee must meet the annual salary threshold and must satisfy at least one element of the executive, administrative, or professional exemption. When the minimum salary level to qualify as exempt under the highly compensated employee exemption was last raised to \$107,432 effective Jan. 1, 2020, the USDOL set it at the 80th percentile of earnings of full-time salaried workers nationally.

The proposed rule also establishes automatic increases to these salary levels every three years. The minimum salary level to qualify for the executive, administrative, and professional exemptions will automatically increase to the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region, and the minimum salary level to qualify for the highly compensated employee exemption will automatically increase to the 85th percentile of earnings of full-time salaried workers nationally.

The proposed rule does not include any changes to the duties requirements for any of the white collar exemptions.

New York's minimum salary level to qualify for the executive and administrative exemptions is currently higher than \$1,059 per week in all regions. However, New York does not set a minimum salary level to qualify for the professional exemption, so if this proposed rule is adopted, employers will need to review the salary levels of professional employees to ensure that they meet the new federal threshold. In addition, employers should keep in mind that New York's minimum salary threshold for the executive and administrative exemptions is "inclusive of board, lodging, or other allowances and facilities" while the federal minimum salary threshold must be "exclusive of board,

lodging, or other facilities.” So, if this proposed rule is adopted, employers that use housing or meal allowances to meet the New York salary threshold will still need to ensure that the new federal salary threshold is met when those housing or meal allowances are not counted.

The proposed rule will be open to public comment for 60 days after the proposed rule is published in the Federal Register. There may also be some legal challenges to the rule if it is ultimately adopted, just as there were in 2016 after the USDOL issued a final rule increasing the exempt salary threshold to \$913 per week. In 2016, the U.S. District Court for the Eastern District of Texas issued a nationwide injunction prohibiting the USDOL from implementing the final rule.

If you have any questions about the information presented in this blog post, please contact [Subhash Viswanathan](#), any attorney in Bond’s [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.

